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09/975,766	10/10/2001	Tsuyoshi Sakata	4777/4	9495
29540	7590	11/29/2005	EXAMINER	
PITNEY HARDIN LLP 7 TIMES SQUARE NEW YORK, NY 10036-7311				SHEPARD, JUSTIN E
			ART UNIT	PAPER NUMBER
			2617	

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/975,766	SAKATA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Justin E. Shepard	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-19 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: ____                                     |

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## **DETAILED ACTION**

### ***Specification***

The disclosure is objected to because of the following informalities:

On page 17, line 25; part 0505 should be part 0503.

On page 25, line 2; "IFG. 6" should be "FIG. 6."

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is written in an overall confusing manner, but specifically the phrase "taking out the operation" is indefinite. The claim will be examined as interpreted by the examiner.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 18 is rejected under 35 U.S.C. 102(e) as being anticipated by Herz.

Referring to claim 18, Herz discloses a terminal condition control method comprising: a condition information receiving step of receiving from a plurality of terminal condition information indicating conditions of the plurality of terminals each having a receiving section for receiving broadcasting (column 6, lines 39-41 and 64-65); and a statistic processing step of statistically processing a plurality of condition information received in the condition information receiving step (column 4, lines 31-34).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-10, 12, 13, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chernock.

Referring to claim 1, Chernock discloses a terminal condition control method comprising a plurality of terminals and a server apparatus controlling conditions of the terminals, wherein: the terminals are connected to the server apparatus through a communication line (figures 1 and 2) and transmit information indicating the conditions of the terminals (column 6, lines 48-49), the server apparatus statistically processes the attained conditions of the terminals (column 4, lines 56-57; column 12, lines 19-22), the

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plurality of terminals have timings of informing the server apparatus of the condition determined for the respective terminals (column 12, lines 30-31 and 34-36).

Chernock does not disclose a method where the timings for the respective terminals are distributed within a predetermined period.

At the time of the invention it would have been obvious for one of ordinary skill in the art to note that when scheduling terminals to be updated would include a predetermined time period. The motivation would be that a predetermined time period would enable the updates all be completed as soon as possible, so you wouldn't have terminals running outdated programs.

Referring to claim 2, Chernock does not disclose a terminal condition control method according to claim 1, wherein the distribution of the condition information timings for the plurality of terminals is set within a month by date assignment.

At the time of the invention it would have been obvious for one of ordinary skill in the art to set the predetermined timing period to be within a month. The motivation would be that if set over a month period, so that updating a large group would not overwhelm the system.

Referring to claim 3, Chernock discloses a terminal condition control method according to claim 1 or 2, wherein the distribution of the condition informing timings for the plurality of terminals can be changed (column 12, lines 13-14).

Referring to claim 4, Chernock discloses a terminal condition control method according to claim 2, wherein in the distribution of the condition informing for the plurality of terminals, the date assignment is performed such that users assigned on the

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same date as the condition informing timings of the terminals are uniformly distributed in accordance with at least one of items including age, sex, viewing inclination, hobby, occupation, and address (column 5, lines 44-46; Note: demographics is interpreted as encompassing many of the limitations including age, sex, hobby, and occupation).

Referring to claim 5, Chernock discloses a server apparatus comprising: communication means capable of being connected with a plurality of terminals through a communication line (figures 1 and 2); receiving means for receiving condition information from the terminals (column 6, lines 48-49); terminal information analyzing means for analyzing the received condition information (column 6, line 50); and communication controlling means for controlling communication operation performed by the communication means, wherein regarding the plurality of terminals, the communication controlling means defines timings of transmitting conditions of the terminals to the server apparatus for the terminals (column 12, lines 19-22, 30-31, and 34-46).

Chernock does not disclose an apparatus that sets the condition informing timings to be distributed in a predetermined period of time.

At the time of the invention it would have been obvious for one of ordinary skill in the art to note that when scheduling terminals to be updated would include a predetermined time period. The motivation would be that a predetermined time period would enable the updates all be completed as soon as possible, so you wouldn't have terminals running outdated programs.

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Referring to claim 7, Chernock discloses a server apparatus comprising: a condition information receiving section for receiving from a plurality of terminals condition information indicating conditions of the plurality of terminals each having a receiving section for receiving broadcasting (column 6, lines 48-49).

Chernock also discloses statistics generation for quality control (column 4, lines 56-57).

Chernock does not disclose an apparatus where a statistic processing section for statistically processing a plurality of condition information received by the condition information receiving sections.

At the time of the invention it would have been obvious for one of ordinary skill in the art to use include the storage information in the quality control statistics. The motivation would be that knowing the amount of free storage on the terminals would factor into the ability to download new software onto the terminals.

Referring to claim 8, Chernock discloses a server apparatus according to claim 7, further comprising: an operation condition maintaining section for maintaining an operation condition as a condition for executing a predetermined operation; an operation controlling section for controlling the predetermined operation (column 5, lines 27-28); a determining section for determining whether or not the result of the statistic process by the statistic processing section meets the operation condition maintained by the operation condition maintaining section (column 5, lines 39-42); and an operation executing section for taking out the operation controlled by the operation condition

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controlling section to execute the operation when the operation condition is met in the determining section (column 5, lines 44-46).

Referring to claim 9, Chernock discloses a server apparatus according to claim 7, wherein the condition information includes information indicating success/failure of downloading of a software from a broadcasting station to the terminals (column 8, lines 51-54), and the statistic processing section calculates a rate of success/failure of downloading of software from the plurality of condition information received by the condition information receiving section (column 4, lines 56-57).

Referring to claim 10, Chernock discloses a server apparatus according to claim 7 or 8, wherein the condition information includes information indicating success/failure of downloading of software from a broadcasting station to the terminals (column 8, lines 51-54) and information concerning attributes of the terminals (column 6, lines 48-49), and the statistic processing section calculates a rate of success/failure of downloading of software for each of the attributes from the plurality of condition information received by the condition information receiving section (column 4, lines 56-57).

Referring to claim 12, Chernock discloses a server apparatus according to claim 7 or 8, wherein the condition information includes information indicating use of a specific function in the terminals (column 6, lines 48-49; Note: the state of storage is being interpreted as a specific function), and the statistic processing section calculates using a rate of the specific function from the plurality of condition information received by the condition information receiving section (column 4, lines 56-57).

Referring to claim 13, Chernock discloses a server apparatus according to claim 7 or 8, wherein the condition information includes information indicating whether or not the terminals are being connected to the server apparatus (column 12, lines 13-14; Note: not receiving a transmission is interpreted as being an indicator that the terminal was disconnected from the network), and the statistic processing section calculates connection condition of the terminals from the plurality of condition information received by the condition information receiving section (column 4, lines 56-57).

Referring to claim 17, Chernock discloses a terminal comprising a transmitting section for transmitting condition information to be statistically processed by the server apparatus according to claim 7 or 8 (column 6, lines 48-49).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chernock in view of Reilly.

Referring to claim 6, Chernock discloses a terminal comprising: communication means capable of being connected with a server apparatus through a communication line (figures 1 and 2); and condition information generation means for generating condition information including downloading information of a software about the terminal (column 6, lines 48-49); wherein the terminal is connected to the server apparatus by the communication line to transmit the condition information to the server apparatus (figures 1 and 2).

Chernock does not disclose an apparatus where the terminal receives instruction from the server apparatus to set its own condition information transmitting timing.

Reilly discloses an apparatus where the terminal receives instruction from the server apparatus to set its own condition information transmitting timing (column 14, lines 44-47).

At the time of the invention it would have been obvious for one of ordinary skill in the art to allow the terminals to set their own download times, as taught by Reilly, in the system disclosed in Chernock. The motivation would have been to allow for the user to plan for a planned outage, such as shutting the power off for a substantial amount of time.

Claims 11, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chernock in view of Herz.

Referring to claim 11, Chernock does not disclose a server apparatus according to claim 7 or 8, wherein the condition information includes information indicating viewing of a specific program in the terminals, and the statistic processing section calculates an audience rating of the specific program from the plurality of condition information received by the condition information receiving section.

Herz discloses a server apparatus according to claim 7 or 8, wherein the condition information includes information indicating viewing of a specific program in the terminals (column 6, lines 39-41).

Herz discloses creating a virtual channel to be downloaded to a subscriber's terminal based on their view preferences (column 4, lines 31-34)

Herz does not disclose an apparatus where the statistic processing section calculates an audience rating of the specific program from the plurality of condition information received by the condition information receiving section.

At the time of the invention it would have been obvious for one of ordinary skill in the art to modify the use the viewer's preferences as the conditional information, as taught by Herz, in the system disclosed by Chernock. The motivation would have been that Herz is using the preference to download information (channel) specific to the user, and therefore using the preference to download information at a specific time would be obvious. The motivation for combining these two references would have been to provide the information to a specific demographic (people that watch the same programs) (Chernock: column 5, lines 39-42).

Referring to claim 15, Chernock does not disclose a server apparatus according to claim 11, further comprising an advertising rate calculating section for calculating an advertising rate of a specific program with use of the audience rating calculated by the statistic processing section as a parameter.

Herz discloses a server apparatus according to claim 11, further comprising an advertising rate calculating section for calculating an advertising rate of a specific program with use of the audience rating calculated by the statistic processing section as a parameter (column 48, lines 42-45).

At the time of the invention it would have been obvious for one of ordinary skill in the art to rate the commercials as taught by Herz in the system disclosed by Chernock. The motivation for combining these two references would have been to have the system

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be able to provide the information to a specific demographic (people that watch the same programs) (Chernock: column 5, lines 39-42).

Referring to claim 16, Chernock does not disclose a server apparatus according to claim 11, further comprising a program editing information generating section for generating program editing information in accordance with the audience rating.

Herz discloses a server apparatus according to claim 11, further comprising a program editing information generating section for generating program editing information (column 4, lines 31-34; Note creating a channel made of programs that the subscriber watches is interpreted as editing information) in accordance with the audience rating (column 48, lines 42-45).

At the time of the invention it would have been obvious for one of ordinary skill in the art to rate the commercials as taught by Herz in the system disclosed by Chernock. The motivation for combining these two references would have been to have the system be able to provide the information to a specific demographic (people that watch the same programs) (Chernock: column 5, lines 39-42).

At the time of the invention it would have been obvious to edit the program depending on the advertisements watched. The motivation would have been to be able to charge advertisers more for broadcasting commercials that the audience will watch.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chernock in view of Casagrande.

Referring to claim 14, Chernock does not disclose a server apparatus according to claim 9, further comprising: an operation condition maintaining section for maintaining a downloading stopping condition having a predetermined rate of success/failure of downloading of software; an operation controlling section for controlling an operation for stopping the downloading of software; a determining section for determining whether or not the result of the statistic process by the statistic processing section meets the downloading stopping condition maintained by the operation condition maintaining section.

Casagrande discloses a server apparatus according to claim 9, further comprising: an operation condition maintaining section for maintaining a downloading stopping condition having a predetermined rate of success/failure of downloading of software; an operation controlling section for controlling an operation for stopping the downloading of software; a determining section for determining whether or not the result of the statistic process by the statistic processing section meets the downloading stopping condition maintained by the operation condition maintaining section (column 2, lines 54-57).

Casagrande does not disclose an operation executing section for taking out the downloading stopping operation maintained by the operation condition maintaining section to execute the operation when the downloading stopping condition is met in the determining section.

Chernock discloses an operation executing section for taking out the downloading stopping operation maintained by the operation condition maintaining

section to execute the operation when the downloading stopping condition is met in the determining section (column 12, lines 19-22).

At the time of the invention it would have been obvious for one of ordinary skill in the art to attempt the downloading for a fixed number of tries, as taught by Casagrande, before stopping the downloading until enough time had passed to try again, as disclosed by Chernock. The motivation would be to avoid wasting bandwidth on an area that is having weather trouble (Chernock: column 12, lines 27-28).

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herz in view of Chernock.

Herz discloses a terminal condition control method according to claim 18, further comprising: a determining step of determining whether or not the result of the statistic process by the statistic processing step meets an operation condition maintained in advance (column 4, lines 31-34; Note: creating a channel for a specific subscriber is interpreted as statistically processing information to meet an operating condition, as the information sent would have to be sent to the headend, processed, and then put up against a matrix to decide which programs to include).

Herz does not disclose an operation executing step of taking out the operation controlled in advance to execute the operation when determination in the determining step meets the operation condition.

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Chernock discloses an operation executing step of taking out the operation controlled in advance to execute the operation when determination in the determining step meets the operation condition (column 12, lines 13-14, 19-22, and 34-36; Note: this limitation is interpreted as downloading the software at another time depending on a condition, as this is similar to the scope of the other claims).

At the time of the invention it would have been obvious for one of ordinary skill in the art to use the method of downloading software, as taught by Chernock, in the conditional system disclosed by Herz. The motivation for combining these two references would have been to have the system be able to provide the information to a specific demographic (people that watch the same programs) (Chernock: column 5, lines 39-42).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin E. Shepard whose telephone number is (571) 272-5967. The examiner can normally be reached on 7:30-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JS

  
CHRIS KELLEY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600